

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

IN RE: )  
 )  
LEMAR ALLEN BOWERS, ) CASE NO. 19-33915-KRH  
 ) CHAPTER 13  
 )  
 )  
Debtor. )

**THIRD OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN  
NOTICE OF OBJECTION TO CONFIRMATION OF PLAN  
AND NOTICE OF SCHEDULED HEARING ON THIS OBJECTION**

I. Notice of Objection and Notice of Hearing

| PLACE OF HEARING:   | DATE AND TIME OF HEARING:  |
|---|----------------------------|
| Courtroom 5000<br>701 East Broad Street<br>Richmond, Virginia 23219 | May 20, 2020<br>11:10 a.m. |

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

II. Objection to Confirmation of Chapter 13 Plan

The United States of America, by and through undersigned counsel, on behalf of its Internal Revenue Service, hereby objects to confirmation of the proposed Chapter 13 Plan (Dkt No. 51) on the following grounds:

Robert P. McIntosh  
Assistant United States Attorney  
SunTrust Center  
919 East Main Street, Suite 1900  
Richmond, Virginia 23219  
Telephone: (804) 819-7404  
Facsimile: (804) 771-2316  
E-Mail: Robert.McIntosh@usdoj.gov  
*Counsel for the United States of America*

1. The Internal Revenue Service timely filed a proof of claim (as amended) setting forth the following information:

|                           |                |
|---------------------------|----------------|
| Date of Claim:            | April 15, 2020 |
| Secured Amount            | \$00.00        |
| Priority Amount:          | \$661,319.10   |
| General Unsecured Amount: | \$19,169.63    |
| Total Claim Amount:       | \$680,488.73   |

2. The debtor(s) filed an amended Chapter 13 plan, treating the claims of the Internal Revenue Service as follows:

|                          | Date of Plan  | Priority Amount | Secured Amount | General (Unsecured)  |
|--------------------------|---------------|-----------------|----------------|----------------------|
|                          | April 3, 2020 | \$0.00          | \$0.00         | 100.00% <sup>1</sup> |
|                          | <b>Total</b>  | \$0.00          | \$0.00         | 100.00%              |
| <b>Reference in Plan</b> |               | Plan ¶ 3(B)     | Plan ¶ 4(D)    | Plan ¶ 5(B)          |

3. The proposed plan does not adequately provide for the Internal Revenue Service's priority claim as required by 11 U.S.C. §1322(a)(2). "The bankruptcy code requires that a

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<sup>1</sup> Debtor explains regarding "100%" payment of IRS's general unsecured claim, "2013 and 2014 Taxes being adjudicated in Tax Court." The proceeding in Tax Court seeks review of a Notice of Determination Concerning Collection Action and disputes procedures involving a collections due process hearing. *See* Petition filed August 31, 2018 attached. Inexplicably, no provision is made for the priority claim.

debtor's Chapter 13 reorganization plan 'provide for full payment, in deferred cash payments, of all claims entitled to priority under Section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claims.' 11 U.S.C. §1322(a)(2) (1984). Any plan lacking the requirements of § 1322(a)(2) (a full payment of priority claims) cannot be confirmed without the claim holder's consent." Matter of Escobedo, 28 F.3d 34, 35 (7th Cir. 1994) (citing Ekeke v. United States, 133 B.R. 450 (S.D. Ill. 1991); In re Driscoll, 57 B.R. 322 (W.D. Wis. 1986); United States v. Reynolds, 38 B.R. 725 (W.D. Va. 1984)<sup>2</sup> *aff'd*, 764 F.2d 1004 (4th Cir. 1985); In re Esser, 22 B.R. 814 (E.D. Mich. 1982)).

4. The proposed plan is underfunded and not feasible. *See* 11 U.S.C. §1325(A)(1); §1325(A)(6). The United States previously objected to the Debtor's Amended Plan (Dkt. 51) which provided as follows:

2. **Funding of Plan.** The debtor(s) propose to pay the Trustee the sum of \$ 1,970.00 per month for 60 months. Other payments to the Trustee are as follows:

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The total amount to be paid into the Plan is \$ 118,200.00.

*See* Dkt. 51, p. 1, ¶2.

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<sup>2</sup> *See United States v. Reynolds*, 38 B.R. at 726 (W.D. Va. 1984) ("A Chapter 13 plan must provide for *full* payment of . . . priority claims") (emphasis in original) *aff'd*, 764 F.2d 1004 (4th Cir. 1985).

The Debtor's current amended plan is virtually unchanged from the prior plan and provides as follows:

2. **Funding of Plan.** The debtor(s) propose to pay the Trustee the sum of **\$1,726.00 per month for 8 months, then \$2,021.00 per month for 52 months.**

Other payments to the Trustee are as follows:

The total amount to be paid into the Plan is \$ 118,900.00

See Dkt. 62, pp. 1-2, ¶2.

5. The pleadings filed in this case report debts exceeding the debt limitations of 11 U.S.C. §109(e). As of April 1, 2019, the §109(e) debt limits increased to \$419,275.00 for unsecured debt, and \$1,257,850 for secured debts. The Debtor bears the burden of establishing eligibility. See Singer Asset Fin. Co., LLC v. Mullins (In re Mullins), 360 B.R. 493, 498 (Bankr. W.D. Va. 2007). It appears that the Debtor is not eligible for relief under Chapter 13 of the Bankruptcy Code.

WHEREFORE, the United States respectfully requests that confirmation of the proposed plan be denied.

Respectfully submitted,

G. ZACHARY TERWILLIGER  
United States Attorney

By: /s/ Robert P. McIntosh  
Robert P. McIntosh  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served the foregoing upon all interested parties to this proceeding, by causing true and correct copies thereof to be placed in the United States mail, postage prepaid, addressed as follows:

LeMar Allen Bowers  
10250 Scots Landing Road  
Mechanicsville, VA 23116  
*Debtor*

I hereby certify a copy of foregoing will be filed with the United States Bankruptcy Court electronically in the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Parties currently listed by the CM/ECF system to receive electronic notice in this case are set forth below.

James E. Kane  
Kane & Papa, PC  
Email: jkane@kaneandpapa.com  
*Debtor's Attorney*

Carl M. Bates  
*Chapter 13 Trustee*  
Email: station01@richchap13.com; station06@richchap13.com;  
station03@richchap13.com; station10@richchap13.com; station07@richchap13.com

Date: April 16, 2020

/s/ Robert P. McIntosh  
ROBERT P. MCINTOSH